

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No. 2258-2016 (O&M)

Date of decision : 30.07.2019

Harcharan Singh

...Petitioner

V/s

State of Haryana & anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Sourabh Mohunta, DAG Haryana.

None for respondent no. 2.

RAJAN GUPTA J.

Challenge in the present revision petition is to order dated 31.05.2016 passed by Additional Sessions Judge, Fatehabad whereby respondent no. 2 was declared 'Juvenile in conflict with law' and was ordered to be tried by Juvenile Justice Board, Fatehabad.

Brief factual background of the case is that a complaint was lodged by Harcharan Singh (petitioner herein) alleging therein that on 18.01.2011 he alongwith Gursewak Singh & uncle Bhim Singh were going to Ratia for depositing an amount of ₹22.00 lacs with Commission Agent in Alto car bearing registration no. HR-59-0345. At about 2.30 p.m., when they reached at Rangoi Nala, their car was waylaid by the accused. They were attacked and one of the accused fired shot on their vehicle which hit on the upper side of chest of Bhim Singh who fell down unconscious. The bag containing ₹22.00 lacs was snatched by the accused party. Thereafter, Bhim Singh was taken to G.H., Fatehabad where he was declared dead. FIR No.

45 dated 18.01.2011 under sections 396, 420, 216, 412, 201, 120-B IPC and section 25 of the Arms Act was registered at Police Station Ratia. On completion of the investigation, challan against respondent no. 2 and other accused was presented in the competent court. Vide order dated 27.09.2011 passed by ASJ, Fatehabad, all the accused were charge sheeted. After conclusion of evidence, statement under section 313 Cr.P.C. of respondent no. 2 was recorded on 09.09.2014. Thereafter, on 07.10.2014, respondent no. 2 filed an application under section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 for conducting inquiry with regard to his age. Vide order dated 09.01.2015, Additional Sessions Judge, Fatehabad declared respondent no. 2 to be a juvenile and directed his trial to be conducted by Principal Magistrate, Juvenile Justice Board. Aforesaid order was challenged before this court on the ground that Section 7-A of Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007 have not been complied with in letter and spirit. After hearing learned counsel for the parties and documents placed on record, order dated 09.01.2015 was set-aside and the matter was remitted to same court for decision afresh vide order dated May 04, 2016. Vide impugned order dated 31.05.2016, Additional Sessions Judge, Fatehabad held that respondent no. 2 was 15 years 08 months and 05 days of age on the date of the alleged incident i.e. on 18.01.2011 after taking into consideration the report submitted by Board of Doctors and relying upon certain documents, extending the benefit of two years in age as assessed by Medical Board (23-24 years) and also by granting additional benefit of 01 year as per Rule 12(3)(b) of Juvenile Justice (Care and Protection of Children) Rules, 2007. Aggrieved, present

In the present case, respondent no. 2 has no matriculation or equivalent certificate. He has placed reliance on the school leaving certificate Ex. A-3 issued by Adarsh Shiksha Sadan, Kheri Dudhadhari, Muzaffarnagar. However, the school leaving certificate, Ex. A-3 cannot be presumed to be the date of birth certificate issued by the school first attended and does not fall within the ambit of Rule 12 (3)(a)(ii). In this regard, Rule 12 of Juvenile Justice Care and Protection of Children Rules 2007 is relevant. Same reads as under:-

12 Procedure to be followed in determination of Age

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application of that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly

constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

A careful perusal of aforesaid provisions makes it clear that the prime evidence to ascertain the age of a person is his/her Matriculation or equivalent certificate. It is only in the absence of Matriculation or equivalent certificate, the date of birth certificate from the school, other than the play school first attended, is the relevant evidence to determine the age. It appears that respondent no. 2 had also produced a copy of birth certificate issued by the Government of Uttar Pradesh to the Medical Board at the time of his ossification test which was placed on file in the evidence of the Chief Medical Officer as Ex. A-2. In the said certificate, the date of birth of respondent no. 2 is mentioned as 13.05.1993. However, the date of registration of the date of birth of respondent no. 2 in the said birth certificate is shown to be 19.11.2014. In other words, respondent no. 2 had got his alleged date of birth registered with the competent authority only on 19.11.2014 i.e. about a month before moving an application for conducting an inquiry about his age. As such, the veracity of the said document cannot be believed. The birth certificate issued by the competent authority of the State Government would have been relevant if the said certificate had been registered immediately after his birth which is not so in the present case. Therefore, the birth certificate issued by competent authority, Ex A-2 is not relevant to assess the age of respondent no. 2 and his case does not fall under any Clause of Rule 12(3)(a). The court also cannot ignore the family register of the family of respondent no. 2, a copy of which is placed on record as Ex. R-4, in which the year of his birth was mentioned as 1990 only on the ground that said document is not covered under Rule 12. When respondent no. 2 had failed to fulfill the requirements of Rule 12, the said document which is stated to have been prepared in the ordinary course of business of the Gram Panchayat becomes relevant which had been duly proved by an officer of the Gram Panchayat while

after receipt of instructions from the Government from time to time and a survey is conducted in the village. He also deposed that year of birth of respondent no. 2 has been mentioned as 1990. In the register, even the name of parents of respondent no. 2 was also mentioned. The information given by the family members/parents had been recorded in the said register. Merely because no specific mention has been made in the said register as to who informed about the birth of the child cannot be a ground to doubt its authenticity. As document R-4 is a part of the public record and prepared in the ordinary course by Gram Panchayat, it is liable to be considered in order to determine the age of respondent no. 2 in the facts and circumstances of the instant case. Relying upon the year of birth i.e. 1990 mentioned in family register, this court is of the view that respondent no. 2 was not a juvenile on the date of commission of the alleged offence i.e. 18.01.2011. No doubt the plea regarding juvenility can be raised at any time and at any stage of the case, however, in the instant case such an application was moved by respondent no. 2 at a much belated stage, when the case was ripe for arguments. It was neither moved during investigation nor at the time when charges were framed nor at the time of recording statement under section 313 Cr.P.C., which raises doubts about the authenticity of the documents relied upon by respondent no. 2 regarding his date of birth to prove his juvenility which may be an afterthought to save himself from the rigors of law.

In view of above, this revision petition is allowed and impugned order dated 31.05.2016 is set-aside. Accused shall stand trial as an adult.

(RAJAN GUPTA)
JUDGE

July 30, 2019

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No